IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

WP(C).No. 30893 of 2006(C)

PETITIONER:

M.MOHAMMED, S/O.MOHAMMED MUSALIYAR, KOLLAMPARAYIL HOUSE, CHATHANGOTPURAM P.O., VEETANASSERY AMSOM DESOM, NILAMBUR TALUK, MALAPPURAM (ARABIC TEACHER, AMLP SCHOOL, EDAPPALAM).

BY ADV. SRI.K.SHIBILI NAHA

RESPONDENTS:

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1. THE DISTRICT EDUCATIONAL OFFICER, WANDOOR, MALAPPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM.

3. THE ASSISTANT EDUCATIONAL OFFICER, WANDOOR, MALAPPURAM.

4. THE MANAGER, AMLP SCHOOL, EDAPPALAM, CHATHANGOTPURAM P.O., WANDOOR VIA, NILAMBUR TALUK, MALAPPURAM.

5. HEAD TEACHER, AMLP SCHOOL, EDAPPALAM, CHATHANGOTPURAM P.O., WANDOOR VIA, NILAMBUR TALUK, MALAPPURAM.

6. STATE REP. BY DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

R1 TO R3 & R6 BY GOVERNMENT PLEADER (SHRI T.T. MUHAMMED)

BY ADV. SRI.JOSE JOSEPH ARAYAKUNNEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C) NO.30893 OF 2006 C

PETITIONER'S EXHIBITS:

EXT.P1 **TRUE COPY OF THE JUDGMENT IN WP(C) NO.18755/06 OF THIS HONOURABLE COURT.**

EXT.P2 **TRUE COPY OF THE ORDER OF THE THIRD RESPONDENT DATED 20.9.2006.**

EXT.P3 **TRUE COPY OF THE REPRESENTATION SENT BY THE PETITIONER TO THE FOURTH RESPONDENT DATED 2.11.2006.**

EXT.P4 **TRUE COPY OF THE RETURNED ENDORSEMENT.**

RESPONDENTS EXHIBITS:

EXT.R4(A) **TRUE COPY OF CERTIFICATE ISSUED BY SPECIAL GRADE SECRETARY, KARUVARAKUNDU GRAMA PANCHAYAT DT. 4.1.2007.**

EXT.R4(B) **TRUE COPY OF CERTIFICATE DATED 5.1.2007 ISSUED BY THE SECRETARY (SPECIAL GRADE), CHERPALACHERY GRAMA PANCHAYAT.**

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 30893 OF 2006 C

Dated this the 9th April, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner is a Rule 51A claimant. He had approached this Court earlier and Ext.P1 Judgment was passed by which this Court directed the AEO to look into the matter and take a decision. Ext.P2 is the said decision. By Ext.P2, the third respondent AEO has found that the petitioner had worked as Arabic Teacher in AMLP School, Edappulam for the period from 14.9.1985 to 12.12.1985 and it was approved, and therefore, he is entitled to the benefit of Rule 51A Chapter XIV A KER. It is further stated that Shri M. Salih, Arabic Teacher of the School retired from service on 30.4.2006 and a vacancy of Arabic Teacher arose in the School due to the retirement of Shri M. Salih. It is ultimately found that the petitioner is a Rule 51A claimant and he is to be appointed in the vacancy of Arabic Teacher in the School. Petitioner filed Ext.P3 before the fourth

respondent Manager seeking compliance with the order. There is inaction. Hence this Writ Petition.

2. A Counter Affidavit has been filed by the fourth respondent Manager. It is stated that the petitioner had worked in the School as Arabic Teacher from 14.9.1985a to 12.12.1985 in a leave vacancy. It is purposefully manipulated by petitioner, it is stated, on the pretext that the teaching experience the petitioner thus gained will help him to obtain admission for training. It is further stated that at that time the fourth respondent was not the Manager. It is stated to be without any idea to attract Rule 51A, and he was not appointed to any permanent vacancy. He was not relieved as per Rule 49 or 52 or on account of termination of service, it is stated. It is also stated that after twentyone years, petitioner cannot claim appointment and his claim is barred by limitation. He is fully engaged in business and he abandoned teaching profession and he did not undergo any training, it is stated. Ext.R4(a) is produced as a Certificate to show that the petitioner has obtained licence for

tyre retreading for the period 2006 - 2007 in the Grama Panchayat. The petitioner had opted a career in business as early as in 1986 and he did not maintain any touch with the teaching profession. It is also stated that it is not safe to appoint the petitioner at the advanced age of 46.

3. Heard the learned counsel appearing for the parties. The prayers of the petitioner include a direction to fourth respondent to appoint him in the light of Ext.P2 and to direct the second respondent to take appropriate action against the fourth respondent Manager as per Rule 7(4) of Chapter III KER for recovery of salary and other benefits due to the petitioner. Counsel for petitioner relies on a decision of this Court in Manoj v. State of Kerala (2004 (2) KLT SN Case No.60), wherein this Court took the view that when the Manager ignores the departmental direction, to defeat the right of the teachers or members of non-teaching staff, Rule 7(4) of Chapter V KER enables the Deputy Director of Education to realize the loss sustained to such members of staff from the Manager. Shri Jose

Joseph Arayakunnel, learned counsel appearing for the fourth respondent Manager would submit that the facts of this case would show that it is a special case. He would rely on the decision of a Division Bench of this Court in Corporate Educational agency v. Lilly (2005 (1) KLT 158) in support of his contentions. He would further submit that the right under Rule 51A is not immutable. He would submit that in the facts of this case, petitioner has not made out a case for the reasons set out in the Counter Affidavit.

4. The preferential right given under Rule 51A is a right which can be defeated in the manner provided in the said provision, namely as contemplated in Notes 1 and 2 to Rule 51A. There is no case for the Manager that the right of petitioner has lost in the manner contemplated by law. If that be so, I do not think it is open to the fourth respondent Manager to contend that the petitioner shall not be appointed, particularly when the Educational Authority has categorically found that the petitioner is a Rule 51A claimant, and he should be appointed to

the vacancy of Arabic Teacher. The Division Bench Judgment referred to by counsel for fourth respondent Manager, in my view, may not cover the facts of this case. This is a case where the Educational Authority has categorically directed the Manager to appoint the petitioner. Disobedience of the order of the Educational Authority invites consequences which are provided under law. One of the reliefs sought for by petitioner is to take action against the Manager. I would think that the petitioner is right in contending that once Ext.P2 order is passed, it is not open to the Manager to raise contentions, such as, petitioner is not entitled to invoke Rule 51A, that the petitioner is engaged in business, and that there is delay, etc. As long as Ext.P2 stands, the Manager is bound to act in accordance with Ext.P2. I find that the petitioner has not specifically invoked Rule 7(4) by bringing it to the notice of the Director after Ext.P2. In such circumstances, the Writ Petition will stand disposed of as follows:

In view of the refusal on the part of the Manager to appoint

the petitioner in compliance with Ext.P2, if the petitioner files a petition before the second respondent DDE, within two weeks from today, the Deputy Director will take appropriate action in accordance with law, after affording an opportunity of hearing to the petitioner, the fourth respondent Manager and any other affected party, within a period of two months from the date of receipt of the petition.

K. M. JOSEPH, JUDGE

kbk.